REMARKS/ARGUMENTS

Claims 1-3, 5-14, 16-20, 29-31 and 33 were rejected and remain pending in the instant application. Claims 4, 15, 21-28 and 32 were previously cancelled. Claims 1-3, 8-10, 20 and 29 are amended herein. All amendments are fully supported by the original disclosure and no new matter had been added. Reconsideration of the claims in view of the amendments and the following remarks is respectfully requested.

Claim Rejections Under 35 UCS § 102

Claims 1-3, 5-14, 16-20, 29-31 and 33 are rejected under 35 USC § 102 as being anticipated by (US Patent 7,272,232 B1) to Donaldson et al. ("Donaldson").

In order to anticipate a claim, the reference must teach every element of the claim. MPEP 2131. "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

While Applicants respectfully maintain that Donaldson fails to teach every element of the rejected claims, Applicants have nonetheless amended independent claims 1, 10 and 29 (without prejudice) in order to advance prosecution. As amended, claim 1 recites a method of operation in a mobile device, the method comprising in part:

"first providing . . . a first audio signal at a first audio volume level . . . selectable by the user;

determining . . . the first audio volume level . . . ;

while providing said first audio signal . . ., providing . . . a second audio signal at a second audio volume level . . . variably controlled by the mobile client device based on said first audio volume level, the second audio volume level being non-intrusively lower than the first audio volume level initially; and

while providing the first and second audio signals, incrementally increasing . . . the second audio volume level from the initial non-intrusive lower volume level to a discernable

volume level higher than the first audio volume level, said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment,

second, determining that the user has not responded to the second audio signal, and

third, increasing the second audio volume level by a second predetermined increment."

The amendments to claim 1 are supported at least in Figures 3a-3b and in paragraphs [0026] and [0037]-[0044].

Claim 1 is directed to a novel method for introducing a second audio signal while a first audio signal is being provided. Both signals are provided by a mobile client device, with the second signal initially provided at a non-intrusive volume level that is lower than the volume of the first signal. The volume of the first audio signal is controlled by the user. The volume of the second audio signal is controlled by the mobile client device based on the volume of the first audio signal, and the mobile client device incrementally increases the volume of the second audio signal based on a lack of user response to the second audio signal. This method ensures that the user will be alerted to the second signal without being startled and/or injured, while allowing the user to experience and enjoy the first audio signal.

Claim 1 requires providing the second audio signal at the initial lower volume level "*while providing* said first audio signal to the user *at the first audio volume level*", and subsequently increasing the volume of the second audio signal "incrementally" to a level higher than that of the first audio signal volume. In other words, the first audio signal volume remains unchanged during provision of the second signal volume at the initial lower volume, then the second audio signal volume is increased in increments until it exceeds the volume of the first audio signal.

In contrast, Donaldson teaches a sound management system for handheld devices in which audio signals from audio sources A and B (an audio source pair) are combined by a priority logic unit 202 according to priority rules. Priority logic unit 202 is coupled to each

audio source of the pair and to each corresponding variable attenuator/amplifier (203, 204). The priority rules within priority logic unit 202 establish the relative gain, relative level, or absolute level to be applied to the audio sources of each pair. Priority logic unit 202 senses presence/amplitude of signals from two audio sources and controls the attenuator/amplifiers to combine the signals into a single output. The combined output has a predetermined signal ratio according to the rule for that audio source pair (see col. 5, lines 31-61; col. 2, lines 52-62; col. 6, lines 12-21). Donaldson discloses that many possible prioritization rules may be applied, such as a rule that audio source A is effectively muted whenever audio source B is active (col. 5, lines 45-49). Other exemplary rules are that the volume of a signal from low priority audio (e.g. music) source B is lowered before combining with high priority (e.g. alert) source A, or that A is raised before combining with B (col. 6, lines 12-21).

Donaldson does not teach the features of claim 1.

First, Donaldson does not teach "incrementally increasing . . . the second audio volume level from the initial non-intrusive level to a discernable volume level higher than the first audio volume level." Donaldson does not disclose an "incremental" volume level increase. Instead, Donaldson merely teaches that a priority rule invokes a fixed, predetermined volume ratio between two audio signals when predetermined conditions are met. The priority rules may cause one signal to be attenuated at a fixed volume ratio during provision of a higher priority signal (see e.g. Figure 3), continued at the same volume during provision of a lower priority signal (see e.g. Figure 4), or attenuated at a fixed volume ratio during the provision of another signal in excess of a predetermined threshold (see e.g. Figure 5 and col. 7, lines 15-22). The volume ratio for the two signals remains **constant** for as long as the rule is applied. Thus, one signal cannot be "incrementally" increased relative to another signal, because any attenuation/amplification would maintain the relative volumes at the fixed ratio or at the absolute levels set by the rule. When the rule ceases to apply, the attenuation/amplification would also cease. Thus, Donaldson cannot teach "incrementally increasing . . . the second audio volume level . . ." as recited in claim 1.

Next, Donaldson does not teach "said incrementally increasing further comprising:

first, increasing the second audio volume level by a first predetermined increment, second, determining that the user has not responded to the second audio signal, and third, increasing the second audio volume level by a second predetermined increment." Donaldson does not teach first and second predetermined increments (i.e. at least two predetermined increments) by which an audio volume level of a signal is increased [while providing another signal]. Nor does Donaldson disclose "determining that the user has not responded" to an audio signal and subsequently "increasing the second audio volume level by a second predetermined increment" [while continuing to provide the first audio signal at the first audio volume level]. At most, Donaldson discloses that when one audio signal has been attenuated in favor of another, the audio signal is restored to its former volume level when the source of the other signal becomes inactive (see e.g. col. 6, lines 35-38 and Figures 3-5).

Therefore, for at least the above reasons, Applicants respectfully submit that Donaldson does not teach every element of claim 1 as amended. Claim 1 is therefore allowable over Donaldson.

Claims 10 and 29 have been amended to recite features substantially similar to those of amended claim 1. Therefore, for at least the same reasons, claims 10 and 29 are also allowable over Donaldson.

Claims 2-3 and 5-9, claims 11-14 and 16-20, and claims 30-31 and 33 depend from claims 1, 10 or 29, respectively. Because these dependent claims incorporate the recitations of their corresponding base claims, they are allowable over Donaldson for at least the same reasons and for their additional recitations.

Applicants respectfully submit that all pending claims have been placed in condition for allowance. Reconsideration and withdrawal of the rejections is therefore requested.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants believe the applicable rejections have been overcome and all claims remaining in the application are presently in condition for allowance. Accordingly, favorable consideration and a Notice of Allowance are earnestly solicited. The Examiner is invited to telephone the undersigned representative at (206) 622-1711 if the Examiner believes that an interview might be useful for any reason.

It is not believed that extensions of time are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a).

If the Examiner has any questions concerning the present paper, the Examiner is kindly requested to contact the undersigned at (206) 407-1542. If any fees are due in connection with filing this paper, the Commissioner is authorized to charge the Deposit Account of Schwabe, Williamson and Wyatt, P.C., No. 50-0393.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: December 17, 2009

By: /Jo Ann Schmidt/
Jo Ann Schmidt
Reg. No.:62,255

Schwabe, Williamson & Wyatt, P.C.
U.S. Bank Centre
1420 5th Ave. Suite 3010
Seattle, WA 98101